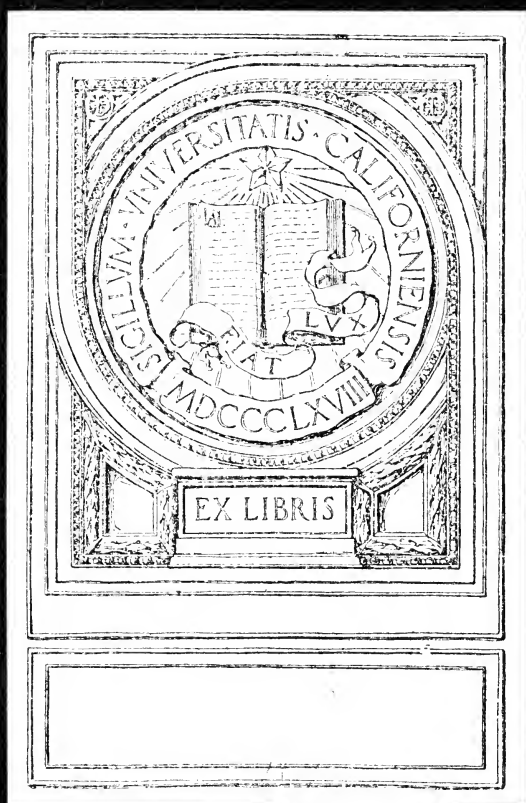


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# VINDICATION

—OF—

*Samuel*  
**DR. MERRITT.**

BEING

THE ARGUMENT OF HIS COUNSEL BEFORE THE ASSEMBLY COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS, AT THE CLOSE OF THEIR INVESTIGATION OF MATTERS CONNECTED WITH THE CONSTRUCTION OF THE UNIVERSITY BUILDING KNOWN AS THE "COLLEGE OF LETTERS."

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*Mr. Chairman and Gentlemen of the Assembly Committee on  
Public Buildings and Grounds.*

Having, as counsel for Dr. Merritt, one of the Regents of the University, attended at the second part of your investigation into the construction of the University building at Berkeley, known as the "College of Letters," it seems proper that I should present to you in my client's behalf, the conclusions which he claims to have been established by the testimony.

Being referred by your chairman to "the newspapers",—for the charges which are to be repelled, we have directed our defence to those points upon which the attack is made by the press. They are, in general, charges of negligence on the part of the Board, and of positive fraud and corruption on the part of Dr. Merritt, in the building of the College of Letters.

The Regents, as a body, by the opening address made by ex-Governor Haight in their behalf, and the summing up made by Mr. Butterworth, as their mouthpiece, have shown very clearly how groundless are the charges made against them. They have shown that their confidence in Doctor Merritt was not ill founded; that in availing themselves of his experience, energy, and sagacity, by throwing the oversight of the building chiefly upon him, they have done wisely, and secured far better results, than if there had been a divided responsibility; and that *they have secured for the State a building better worth the money it cost, than any other public edifice in the State.*

In doing this, they have necessarily, to a great extent, vindicated my client; for the building is mainly the result of his sagacity in planning,—his energy and care in execution. It was through his arguments and representations, that the Regents determined to erect a

## WOODEN BUILDING.

It stands, a monument of his sound judgment;—a commodious, roomy, well arranged edifice,—its halls broad,—its rooms light, airy and pleasant;—one-third larger than the College of Agriculture, and costing less than one-half as much. It has cost too, nearly \$20,000 less than was estimated by the architect for a building three-fourths its size.

The excess of the cost of the College of Agriculture, a building of brick and stone, over that of the College of Letters, put out at interest at eight per cent. per annum, compounded yearly, —will erect a new building like the last named, every eight years. For forty years at least, the wooden building will be as good for use as that of brick and stone. At the end of that time both will be antiquated, and ought to be torn down and replaced by new erections.

It is shown also by the evidence submitted, that, in all the matter,—notwithstanding the outcry raised by “the newspapers” that “everything was left to Dr. Merritt”, and the setting forth in glaring capitals of “Dr. Merritt’s imperial rule.”

## DR. MERRITT HAS NOT EXCEEDED HIS POWERS

in any respect. On the contrary although vested by resolution of the Regents, and of the Building Committee, with power to make (in conjunction with President Gilman) any changes he might see fit,—he is shown to have made not one single change from the plans or specifications, without consulting with the Board, or as many of its members as he could see, and obtaining their consent. On this point there is no conflict in the testimony. Nor is there a single change thus made, which does not prove to have been judicious, upon getting out the facts. This will be shown clearly, when I come to discuss these changes in detail. It is enough now to say that his acts in relation to the building of the College of Letters, after thorough investigation, meet with the unqualified approval of the Board of Regents under whom he acted, as being fully authorized by the authority which they gave him.

Apart from any charges of mere excess of authority on

his part, it has been freely charged that in the construction of the College of Letters, and indeed in the steps preliminary to its construction, gross frauds were perpetrated by my client, and that by collusion between the contractors and himself he was enriched, and the public was robbed.

#### THESE CHARGES OF FRAUD

I propose to meet squarely; and will show by the evidence, —not merely that the testimony does not sustain them,—but affirmatively that they are utterly false.

Before discussing them in detail, there is one general view which substantially disposes of the whole matter.

The charges are made in all the forms which malice could invent, from the direct accusation of fraud, to the sneaking insinuation. But they all have one aim; to persuade the community that Samuel Merritt, one of the Regents of the State University has, through the facilities offered by his official station, stolen money from the State. And “the newspapers” to which we are referred to learn the charges made, have undertaken to specify even, the amount so stolen; one paper placing it as high as from \$30,000 to \$40,000 !

The most natural and direct method of ascertaining whether or not this charge is true, was of course to ascertain whether there was an opportunity to steal;—whether more was paid for the building, than it was fairly worth. If it should appear that the building must have cost the contractors fully as much as the State paid them for it,—it would be evident that there could have been no stealing in its erection. If they could make no money out of the job, —there could have been none to divide with Dr. Merritt.

The committee recognized the correctness of this view. and received evidence at their first sessions (before Dr. Merritt or the Regents were called upon to defend themselves) to show that the building was worth far less than its cost.

Dr. Merritt recognized the correctness of this view, and by letter to the Board of Regents invited the most searching scrutiny into his acts; binding himself to make good to the

University every dollar lost by any wrongful act or omission of his.

The Regents recognized the correctness of this view, and upon receiving Dr. Merritt's letter employed no less than six of the most competent, reliable, and well known architects and builders of the city of San Francisco, to make a thorough examination of the building, and report its actual cash value. They testified before you, that they had faithfully and carefully performed that duty and they gave the result of their labors.

Five of them united in their examination and in their report, which is made in detail. The men who make this report are not unknown here. Messrs. GAYNOR & WILLIAMS, architects of established reputation, have been engaged in that profession in San Francisco, for twenty-two and twenty-four years respectively. Mr. KING, a builder here ever since San Francisco was,—has followed that business for forty years of his life. Messrs. DRURY and KELLY, have been engaged in the same business in San Francisco, for eleven and twelve years respectively, exclusive of their previous experience. These gentlemen have too much character at stake to be even loose or inaccurate in such a matter. They made their estimates upon mutual discussion and consultation. They estimate the cash coin value of the building (without its equipments) as it stands to-day, at \$90,630.

They estimate the value of the carpenters' work at \$15,000, and unanimously say that it would cost much more to build it in the ninety-nine days allowed for its erection than if the contractors had been allowed 150 or 200 days. Most of them, and of the other experts examined on that point, estimate the increased cost of carpenters' labor, from the short time allowed, at twenty per cent. If we only allow ten per cent. that will add \$1,500 to the cost.

We were prepared and offered to show, that the contractors suffered a loss of \$4,100 in selling the warrants which they received at par in payment for their job.

Let us now compare what the contractors received for their work, with subsequent expenditures added, with the cash coin value of the building, as estimated by these experts.



Paid contractors in warrants .....	\$87,475 62
Less discount on warrants .....	4,100 00
Cash received by contractors .....	\$83,375 62
Add subsequent expenditures in finishing basement, etc., as testified to by Mr. Gilchrist, page 896 .....	8,752 42
Total cost, in coin .....	\$92,128 04
Estimated value, in coin .....	\$90,630
Add ten percent. to \$15,000. Carpenters' work, for haste .....	1,500 \$92,130 00

Which does not seem to leave a very broad margin for stealing!!

But here I may properly notice an error (the only one shown) into which these gentlemen appear to have fallen, inadvertently, in their estimate—not an unnatural one:

They estimate the wainscoting, 2,610 lineal feet at two dollars per foot—at \$5,220. This is shown to be a fair price for the pannelled wainscoting put up, painted, grained, and varnished. But the carpenter work, painting, graining, and varnishing are in another place separately estimated, each in one item, for the whole building. Without these, the wainscoting is shown to be worth seventy-five cents per lineal foot. Deducting then, from the aggregate of its estimated value, \$1.25 per foot for the 2,610 feet of wainscoting, or \$3,262.50 in all, we have left \$3,260, as the compensation of Power & Ough, the contractors, for their services in constructing the building.

If we allow half a dollar to the contractors (as is usual) on each day's work in the building (say 4,000) and ten dollars per day for Mr. Ough's personal labor (a very low figure for so excellent a builder as he is proved to be), *three hundred and sixty* dollars would remain as the *profit* of the contractors, over and above what they would have received, if putting up the building by the day. This petty sum would doubtless be swallowed up entirely by the extra expense incurred in making the alterations testified to, after the building had so far progressed, that a part of the basement walls had to be taken down, partitions changed, etc., in order to make these changes.

Another well-known architect of San Francisco, twenty-four years in the profession, (Mr. JOHN WRIGHT, of the firm of WRIGHT & SANDERS) has, at the request of the Board of Regents, made a separate and independent estimate of the value of the College of Letters. He estimates the value of of the building, as it was accepted from the con-

tractors, at .....	\$77,181 95
Add sum since expended thereon.....	8,752 42
Makes total present value.....	85,934 37
Valuation by the other experts ...	\$90,630 00
Less, error in wainscotting .....	3,262 50
Leaves difference in the valuations .....	\$ 1,433 13

Of this difference about \$1,000 is accounted for in the estimate for plumbing, gas-fitting, and steam-fitting. This work, being entirely covered up by the interior finish, of course could not be estimated with much exactness by Mr. Wright, while the others had the advantage of knowing what it actually cost the contractors. He allows only \$1,550, while it is shown that Power & Ough actually paid out for these items the sum of \$2,525. This leaves so small a discrepancy in the estimate, that it is not worth pursuing. The aggregate is made up, too, in so different a manner under the two estimates, that it is not easy to compare them throughout. As far as they can be compared, there seems to be no serious discrepancy—each being higher on some points, and lower on others, as independent estimates made by capable, honest men, with no motive but to do justice—would be likely to be.

To illustrate the determined attempts made to poison the public mind in this matter, I will here call attention to an editorial, published in the *S. F. Evening Post*, of January 27th, 1874, in which it is said of Dr. Merritt, that in the matter of the construction of the “College of Letters, he gave the builders an opportunity of clearing \$40,000 or \$50,000 at the expense of the noble Institution of learning, of which he was one of the managers.”

The *Chronicle* of January 21st, says “from a showing made by a member of the Committee, it seems that the figuring so far in regard to the College of Letters, points to

the conclusion that some \$42,160 has been over-paid on the construction of the building."

And this twaddle, so foolish and absurd in the light of the proof given of the real value of the building, as hardly to rise to the dignity of a libel, or even of a lie, was circulated throughout the State, and believed, doubtless, by thousands of people, before Dr. Merritt had opportunity to be heard. And now that he has been heard, the testimony given in his behalf, has been by newspaper reporters so perverted, and distorted, and suppressed where most favorable to him, that even yet the reading public have not had opportunity to know the facts.

It has been sought, by the testimony of volunteer witnesses who procured themselves to be subpœnaed in the first stages of this investigation, and by others selected by one of your number, at a later stage, to show that the building is worth less than we have shown.

Chief among them is J. W. Duncan, who testified that he would erect such a building for \$10,000 less than its cost to the State.

But, unfortunately for this gentleman's reputation for veracity, he is proved by Mr. Gilchrist's testimony to have said to him more than once, that the building is the cheapest, at the price paid for it, of all the public buildings in the State; and further, that *it could not be duplicated for the money it had cost the State!*

Other persons who endeavored, in the early stages of the investigation, to convey a similar impression, were ascertained to be disappointed bidders for contracts, or bitter personal enemies of Dr. Merritt; and as they made no detailed estimate of the cost of the building, but merely guessed at it from a general glance at the building, it is hardly worth while to detain you with a discussion of their testimony.

The estimate of Messrs. Doyle, Gray, and Mahoney, demands more attention. They appeared on the stand like honest, well intentioned gentlemen, although it was palpable that they thought the obligation of their oath was that they should figure the value of the building as low as possible.

Their estimate of the value of the building as it stands, exclusive of profit to contractors, is \$67,913.92.

But they only allow for painting, graining, varnishing, etc., \$4,300, while it is shown without contradiction by Mr. Farwell, who did the painting under the contractors, that it actually cost them between \$7,000 and \$8,000 for the labor and material.

They allow for carpenters' labor only \$9,750; being 2,437½ days' work on a building one hundred and seventy feet long, about sixty-five feet wide, and four-stories high. As has been stated, the five gentlemen who made the estimate for the Regents, allow \$15,000, or 3,750 days' work for this item. In the estimate of Doyle and his colleagues the carpenter work is reckoned at only a trifle over fourteen per cent. of the whole cost of the building. According to the estimate of Messrs. Gaynor and Williams and their associates, it forms about sixteen and a half per cent. of the whole cost.

Mr. Doyle and his associates also reckon the brick-work at three dollars per M less, in the wall, than the others do, and their estimate of the prices of lumber are considerably lower. I could not see that the three gentlemen were more likely to be correct than the six, on these points. They allow only \$1,000 for hauling to Berkeley, (some five miles from Oakland,) all the material used in the building, including among other items

286 M Brick;

Over 350 M lumber.

All the lime, cement and sand used in laying these bricks, plastering the inside of the building, and cementing the outside of the basement walls, as well as in deafening the floor.

All the doors, sash, blinds, columns, pilasters, balusters, and other work manufactured and put together at the mill, etc., etc.

For this hauling the six experts allowed \$1,500, and no one can doubt that the allowance is little enough.

I offered, in behalf of Dr. Merritt, to put on the stand after Messrs. Doyle, Mahoney, and Gray had testified, Mr. Thomas Moffatt, a thorough carpenter and builder, (who

had carefully examined the building, and was with these gentlemen during a part of their examination,) in order to point out some of the errors into which they had fallen. At the time they were sworn and sent to Berkeley, I stated to the Committee, in behalf of Dr. Merritt, that evidence had been offered by his opponents, to show the building worth less than was paid for it. The testimony of the six architects and builders had been offered to rebut that evidence. If new evidence should now be offered, merely cumulative, upon that point—to bolster up that first given against my client—we should claim the right to rebut that also. I understood the right so to do, to be conceded, yet after these three experts had been introduced to confirm the testimony first given, to the effect that the building was not worth the money paid for it, Dr. Merritt was not allowed to rebut that testimony, and we had to withdraw our witness.

I cannot believe that the committee intended any unfairness: I presume that they were simply tired of this tedious work of investigation. But, unless thoroughly satisfied that the building is worth all it cost, they certainly did my client an injustice in thus stopping his mouth, and refusing to hear his witness.

But I must admit that his testimony was not needed. Without it, the building is incontestibly proven to be well worth every dollar it has cost the State. Without further testimony, it is clearly shown that there could be no “stealing” about the building—for the reason that there was no more than a very moderate margin, in the price paid, for the contractors’ personal services.

I have thus fully stated this matter, because the public mind had, by the *ex parte* testimony first given, been poisoned; and the people of the State made fully to believe that in this matter and that—in paint and plaster, and stairs and windows, in porches and piazza—and, in fact, all over the building—by collusion between the contractors and Dr. Merritt, the State had been plundered, and the conspirators enriched. To *disprove* these things in detail, with such an impression existing in advance, would be a very up-hill undertaking. For that reason, since a twenty years’ residence in our midst, extensively engaged in business, with a charac-

ter among his fellow citizens all that time, free from stain, is to count for nothing, it seemed best to show, first of all, in general, that there could have been no stealing, for the plain reason, that there was

#### NO ROOM FOR STEALING.

I may, perhaps, be excused, on so vital a point, a little repetition, by way of summary.

In doing it, I adopt the estimate of the six architects and builders—having shown that the estimates of the other gentlemen give no reason for rejecting or modifying it.

Value of the building, as estimated in cash,	
gold coin .....	\$90,630 40
Less, error in wainscotting.....	3,252 50
	<hr/>
	\$87,377 90
Add ten per cent. to labor, for haste in building	
—ninety-nine days—only.....	1,500 00
	<hr/>
	\$88,877 90
Warrants paid contractors.....	\$87,475 62
Less discount.....	4,100 00
	<hr/>
	\$83,375 62
Subsequent expenditures on basement 8,752 42—	92,128 04
	<hr/>
Balance for contractor's services and profits....	\$ 3,250 14

In full assurance that, by the showing made, you are already convinced, that the State has received a full equivalent for its money in the College of Letters, I propose now to meet, in detail, the charges made against my client, of colluding with the contractors to defraud the State, by means of departures from the contract; the alleged allowance of too large compensation for extra work done by them; and too small deduction from the contract prices on account of omissions or other changes from the specifications, which lessened the cost of building.

To understand this matter of departures from the plans and specifications, a brief *resume* of the history of the building is necessary.

It was originally proposed to erect the two Colleges—of Agriculture and Letters, respectively—of brick, stone, and iron. The plans and specifications for both were drawn, with that object in view, by Mr. Farquharson, a well-known architect of San Francisco. With him as architect, the College of Agriculture was begun. J. W. Duncan acting as Superintendent of Construction—the labor (by compulsion of statute) being done by the day, under the eight-hour law. It is a building about three-fourths as large as the College of Letters. When the basement walls were nearly completed, but before the window-caps were in, *forty-eight thousand dollars* in gold coin had been expended on the job, and the funds of the University were exhausted.

At the instance of the Regents, the statute was so amended that the work could be done by contract. The Legislature of 1871–2 liberally appropriated \$300,000 for University Buildings; contracts were given out for the completion of the College of Agriculture, and it has been finished at a total cost of \$200,000, as nearly as can be calculated—exclusive of its very expensive equipments.

After contract made for completion of this first University building, and the necessary disbursements determined upon for improvement of the University grounds, it was evident, that there would not be nearly enough money left at the disposal of the Regents to build the College of Letters in so expensive a style, or of so costly material.

The architect, who had received some \$7,000 for his services, estimated the cost of a second building, of the same style and material as the first, at \$150,000! To build it in wood, with brick basement walls, he estimated would cost twenty-five per cent. less, or \$112,500.

The Regents, with the College of Agriculture before their eyes, less in size and costing \$200,000, feared that \$150,000 would not build the second building in the same style.

Dr. Merritt insisted that a good enough building of wood could be build, of the proposed dimensions, for \$25,000 less than the architect's estimate—which would make it cost \$87,500.

The Regents were very willing to erect a wooden build-

ing, if it could be done at that figure; and they adopted the suggestion of a wooden building, relying upon Dr. Merritt's judgment, and with the understanding that he was to give his personal attention to the construction of the building, and be measurably responsible for its being built within this estimate of its cost.

Time pressed, President Gilman's zeal had inspired the Board with a strong desire to complete the College of Letters in time to commence the College year of 1873-4, at Berkeley, and not to remain another year at their temporary quarters in Oakland. At the very meeting at which a wooden building was determined upon, Dr. Merritt was authorized by his brother Regents to order by telegraph from Puget Sound, the rough lumber needed for its erection, it being then impossible to procure the long lengths needed either in Oakland or San Francisco. He ordered it at once. Before it arrived the Regents had their attention called by their Secretary, (Mr. Moulder), to the statute which *required* them to build by contract, instead of leaving it optional with them, as they had supposed.

Proposals for building the College of Letters by contract were at once invited by advertisement, and the contract was awarded to Messrs. Power & Ough, at the price of \$83,750; their bid being \$150 lower than that of Mr. Mayberry, the only other bidder on the whole contract. The contract was signed, May 13th, 1873, and the building was to be completed by the twentieth of September, following.

A vital question in this investigation is, what were the requirements of that contract?

When a wooden building was determined upon, it became necessary, of course, to change the plans and specifications accordingly.

Dr. Merritt, who took the laboring at the request of the Board, and by authority of its express resolution, applied to Mr. Farquharson to set his price for making the necessary changes. He said he should charge \$2,000, and \$1,000 additional, if he should superintend the construction of the building.

The Doctor did not desire to get so much "architect" as that into the building, and made the same application to



a Mr. Ball, an Oakland architect, who has testified as an expert in this case. His price was \$1,000. When this was objected to, he gently reminded Dr. Merritt that he might as well pay him liberally, as the money would come out of the University funds, and not out of the Doctor's own pocket. Had the Doctor's vision not been so obtuse that he could not "see it," possibly there would have been one less witness against him!

Mr. Newsom, a very competent architect, of San Francisco, was next applied to. He agreed to do the work for \$300.

The original plans and specifications were handed to him, with directions to make them over, with the necessary changes to suit them for "a good, plain wooden building, " with brick walls for the basement—to correspond in external appearance, as nearly as may be, with the College " of Agriculture."

The work was done satisfactorily, the plans and specifications were handed to Doctor Merritt, who placed them in the hands of J. W. DUNCAN, the University Superintendent of construction, with orders to let no one have them without a written order from Doctor Merritt. This is proved;—he himself does not deny it. He says he gave them to POWER & OUGH; but admits that he never received orders from any one so to do!

It is proved by Mr. Miller, who did the mill-work for the building, and was thus in constant communication with them as the work progressed, that the contractors (P. & O.) never used the original plans, but only *traced copies*, which they left with him, and which he produces.

The contractors, in their letters deny having had the originals of either plans or specifications,—and no one but Duncan pretends to have seen them in their hands. In saying he did give them to the contractors, Duncan admits a grave breach of trust on his own part. His misstatements under oath upon other points to which I shall call attention, are so plainly shown by the testimony of "a cloud of witnesses", that clearly no weight can be given to his declarations on any point. "False in one, false in all".

He and his fellow-conspirators insinuate that these papers

were destroyed by Power & Ough to conceal their fraud. We charge directly that they are suppressed by Mr. Duncan, as a part of the conspiracy to change the government of the University, and so bring back Mr. Duncan to his fat berth,—under the new *regime*. With these papers suppressed, it was easy for him to swear to any pretended requirements of the specifications, and to claim the existence of fraud in that such pretended requirements were not complied with.

It seems a preconcerted thing that all the swift witnesses against Dr. Merritt should swear that the specifications for the College of Letters were the same as for the College of Agriculture, except the substitution of wooden walls for brick above the basement.

The extreme improbability of this is shown by the fact that Mr. Farquharson estimated the cost of a building considerably smaller, to be built according to such specifications, at \$112,500; and when did an architect ever over estimate the cost of a building! The only two bids made for constructing the building, as an entirety, went below \$84,000.

Is it conceivable that these bids could be for the erection of a building estimated by so experienced an architect as Mr. Farquharson, to cost \$28,000 more?

But if we bear in mind the disgust of the Regents, and especially of Dr. Merritt, at the throwing away of money in the College of Agriculture upon laurel-wood newell-posts stuck in wherever there was a chance for one,—upon carving, scroll-work,—upon wainscotting “glued together, making “panels from eleven to eighteen inches from centers, with “convex corners, and raised or lipped mouldings broke “around them, and also glued on, and four rosettes in the “corner of each pannel, together with heavy cap and base “mouldings, and finishes to correspond, and turned terminal blocks at the openings, to receive the lap-finish, all “smoothed and cleaned up”, &c., &c., we shall understand why Mr. Newsome’s directions were to draw specifications for a *plain* wooden building,—and why the finish of the College of Letters on the inside is less elaborate and less expensive than that in the College of Agriculture, without

having to conjure up any fraud in the matter. The evidence shows clearly that it was not intended to finish the new building as expensively on the inside as the first building was finished. The object was to get a good, but *cheap* building. And it is in testimony that the object sought for by Dr. Merritt in many of the changes from the original plan, was to give more room without additional expense. How well he succeeded, let those judge, who have visited the large, light, airy rooms, and broad halls of the College of Letters, and have contrasted that building with the College of Agriculture.

The only testimony which goes to show that the inside finish of the two buildings was to be the same in style, is based upon mere recollection, after an interval of nearly a year. Mr. Mayberry, who put in a bid against *Power & Ough*, says the finish was to be the same, and in response to Mr. Terrill's leading questions gives, and pretends to give all the *minutiae*,—how many nails to a lath, and how many to a flooring board,—how the panels and mouldings of the wainscot were required to be;—but he cannot tell how many houses he has built within the last two years! A memory so remarkably retentive as to these trivial details, and so sieve-like on much larger matters, is, to say the least, subject to suspicion. And where its possessor was a disappointed bidder, and shows a very malignant temper towards the contractors and Dr. Merritt, his statements should certainly be taken with some allowance.

Messrs. Wolf and Ball,—who assume to appraise the variations from the specifications,—admit that they never saw either plans or specifications,—nor did Messrs. Doyle, Gray & Mahoney. The whole assumption that the interior finish of the two buildings was to be alike, rests upon the testimony of Duncan, whose testimony in other matters is proved to be false,—and that of Mayberry,—who sought the contract, did not get it, and believed that he was cheated out of it by the man against whom he testifies.

One little circumstance shows the unreliable nature of mere recollection on such matters. Both these witnesses and Farquharson the architect swore plumply, that the wainscotting of the College of Agriculture was mortised and

tennoned; and one of your own number stated the same thing during one of your sessions. It was assumed that the same style of work was called for in the College of Letters, and the extra expense of the mortising and tennoning was shown to be fifty cents per foot. Yet, in the face of these positive statements, it is proved that the wainscotting in the College of Agriculture is *not* mortised and tennoned, and the fact had to be conceded.

Mr. Farquharson then swore positively that the specifications for the College of Agriculture called for the wainscot to be mortised and tennoned. He was requested to examine the specifications,—did so,—and had to admit that his recollection was erroneous.

So much for these men who are willing to swear away the reputation of honest men, on their recollection of the contents of documents after the lapse of nearly a year, since their inspection. This one item makes a difference of over thirteen hundred dollars !

I assume then that it is not proved, nor is there reason to believe, that the specifications drawn by Mr. Newsome for the College of Letters, called for the same inside finish as that in the College of Agriculture. And this sweeps away at one breath the monstrous estimates made by Messrs. Wolf, Ball, and Mayberry, of the lessened value of the building by reason of alleged departures from the specifications,—as well as much of the estimate similarly made by Messrs. Doyle, Gray and Mahoney.

Let us now examine in detail the

#### OMISSIONS AND SUBSTITUTIONS

of which so much has been said. It seems to be assumed that no allowance was made by the contractors for the matters omitted, which were called for by the specifications,—but that these omissions had been concealed and were only just now discovered through this investigation ! No allusion is made to the fact, that the sum of *eleven thousand five hundred and thirty-two dollars* was allowed by the contractors for these very omissions and changes favorable to them. I will show by the testimony of the very witness brought to testify against my client, that this amount very nearly covers all the

changes made, even admitting that the inside finish of the two buildings was to be the same.

#### CHANGES AUTHORIZED BY DR. MERRITT.

The changes ordered by Dr. Merritt with the approval of President Gilman, and by him reported to the Board of Regents, which lessen the expense, are as follows:

*Four Iron Girders* omitted; the floor timbers being individually trussed and a wooden girder held in place by an inverted truss of iron rods, being substituted.

*Frear Stone Caps and Sills* omitted from basement windows, because they could not be obtained in time. Brick arches were substituted for the caps, and Redwood sills for the Frear stone.

*Two-coat Plastering* was substituted for *three-coat*; the object being to save enough thus to get the wing chambers of the Mansard finished (originally planned not to be finished), without any addition to the aggregate cost of the plastering.

Some of the *Cornice* was omitted from the main halls for the same reason.

One coat of paint and two of sand were omitted from the outside, because it was believed to be absolutely better to put on only *three coats of paint*, than to put on *four* coats of paint and two of sand in so short a time on a new building. All the experts agree, that if four coats of paint and two of sand had been put on in the short time allowed, it would have blistered and peeled badly, and at this time would not be in so good a condition as it is now in.

The platform in Prof. Le Conte's room was omitted, because the Professor was not then ready to say how he wished it arranged. The columns and balustrade for the same room were got out by the contractors and turned over to the University, and put up after the platform was built.

*Redwood* was substituted for *White Cedar* in the interior finish, because seasoned cedar could not then be found in market.

*Galvanized Iron Conductors* (not *Tin* as falsely stated by one witness) were substituted for Cast-iron, as being more suitable for a wooden building.

For the same reason, and for the sake of economy, a Wooden balustrade or cresting was substituted for Iron, on the deck of the roof.

Black Walnut was substituted for Laurel in the stair-balustrade, as being cheaper, and quite as good.

#### NO OTHER CHANGES AUTHORIZED.

Dr. Merritt testifies that he knew of no other deviations from the specifications or plans, making the building less expensive. He neither ordered nor consented to any other. As these could not amount to more than \$4,000 to \$5,000 at the outside, he considered the balance of the \$11,532 allowed by the contractors for "saving by alterations ordered by "the Building Committee and contributions to the University by the contractors," as coming under the latter head; a contribution to the University, by the contractors, of their profits over and above reasonable compensation for their services, according to their original verbal agreement with him to that effect made when they signed the contract. He never examined the specifications. He deemed the architect who drew them far more competent than himself to make them what they should be, after being told in general terms what was wanted.

Nor did he, nor could he personally watch the details of the construction of the building; for he was not a carpenter, plumber, painter, mason or stair-builder.

#### DUNCAN EMPLOYED TO WATCH CONTRACTORS.

Mr. J. W. Duncan, an experienced builder, was employed by the Regents at \$200 per month as their Superintendent of Construction, for no other purpose than to see to it that the two Colleges—of Agriculture and Letters—were built according to the specifications, both as to workmanship and material.

Dr. Merritt's instructions to Duncan were not to *stop* the contractors, if he should see anything wrong in either respect, for time pressed, but to notify him, Dr. Merritt, at once of any change made without his authority.

#### DUNCAN GAVE NO NOTICE OF OTHER CHANGES.

Duncan admits that he never did notify Dr. Merritt that

the contractors made one single deviation from the plans or specifications, other than those which Dr. Merritt has specified in his report, and that Dr. Merritt never notified him that any other change for the cheaper, was consented to by the Building Committee or himself.

If the other alleged changes were made without authority of Dr. Merritt or the Building Committee, as Duncan now says, and if Mr. Duncan (as he now testifies) knew that such changes were being made, whereby the contractors unjustly took from the State several thousand dollars—then Mr. Duncan was false to his trust, and a traitor to his employers. As regards his own reputation, it does not matter much whether he is to be viewed in that light, or as a perjured witness. One or the other he certainly is.

In any event, Dr. Merritt is entirely exonerated from blame. He depended, as he had a right to do, upon Mr. Duncan who had in his possession the plans and specifications, and was hired to be the watch-dog of the Regents, to watch the actions of the contractors, and see that they fulfilled their contract in all respects. *It was not the business of Dr. Merritt, or of any one of the Regents, to climb up among the roof-timbers and ascertain whether the "jack-rafters" had one nail or two; or to notice whether the laths had four nails each, or five.* Mr. Duncan was hired for that very purpose. There is an old saying, that a man "should not keep a dog and bark himself."

#### NO PROFIT TO CONTRACTORS BY CHANGES.

But we shall find on examination, that the allowance made by the contractors would, within a trifling sum, cover the amount saved by omissions and changes, even if it were admitted that the specifications were departed from in all the particulars charged. The difference in the expense has been greatly exaggerated.

#### DISAGREEMENT OF WITNESSES.

It is especially noteworthy, that hardly any two estimates on this matter agree, or even approach each other—either as to the points of difference in the finish of the two buildings,

or the amount of difference in the cost made by any of the alleged departures from the specifications.

One witness, or set of experts, testifies to one list of omissions and changes; another, to another. For one omission, one set of experts figure one price; another estimates it at one-third as much.

#### FIGURING BY WOLFE, BALL AND MAYBERRY.

These original experts figured the omissions up to \$20,000!

#### WINDOW AND OTHER OUTSIDE FINISH.

Of this, \$5,460 was figured up as omitted from the outside finish: windows, pilasters, cornice, etc.

But the accidental discovery of the traced copies of the front and end elevations, produced by Mr. Miller, with his testimony on the matter, shows that the finish of the building, as it stands, is almost precisely as called for; certainly not less expensive. This strikes out nearly \$5,500 from their aggregate, "at one fell swoop."

#### WAINSCOT.

They estimate the wainscoting (1,790 feet) at two dollars per foot less than called for by the specifications—assuming them to call for the same as in the College of Agriculture.

Messrs. Doyle, Gray and Mahoney (the experts employed by the committee) allow for this, *one dollar per foot*. As these last experts supposed the wainscoting, in the College of Agriculture, to be *mortised and tenoned*, when they made their comparison, their estimate must be still farther reduced half a dollar per foot: for it is proved, as I have shown, that the wainscoting in the last-named building was *not mortised and tenoned*, and that it is worth half a dollar less per foot than if so made.

This strikes off \$2,662.50 additional from the \$20,000.

The Wolfe crowd estimate the difference in

#### HARDWARE

At \$2,500, and Mr. Wolfe's letter says they might just as well put it at \$3,500! I quite agree with him that there is no limit to his power of "marking up," when deemed necessary, in order to injure Dr. Merritt.



But the experts employed by the committee, cut this item down to \$1,270—a reduction of \$1,230.

Mr. Wolfe and his associates say the stairs are worth \$4,667 less than if built as called for, like those in the College of Agriculture.

Mr. Duncan estimates this difference at \$500. But as he has forfeited all claim to be believed, even when he speaks the truth, we will adopt the estimate of Mr. Blair, who built the stairs for Power & Ough, and who put in a bid, originally, to build the stairs as specified. He figures the difference at \$3,500—a reduction of \$1,167.

Allowing the balance of the estimate of Wolfe and others to be correct, we have now established, by irrefragable evidence, that we should

DEDUCT FROM THEIR ESTIMATE \$10,519 50

For these four items alone; or more than half the \$20,000 sworn to by them as pocketed by the contractors, by disregarding the specifications.

It can hardly be worth while to examine farther an estimate so recklessly made.

MESSRS. DOYLE, MAHONEY, and GRAY, estimate the omissions and substitutions of cheaper work and material at \$12,112.87; presuming that the inside finish was to be like that in the other building.

But they make the difference in the wainscoting half a dollar per foot (or \$1,037.50) too great, as just now shown by me.

They estimate the difference in flooring at least five hundred dollars higher than the testimony of other witnesses, on a thorough cross-examination, shows it to be.

They figure the difference in the stairs, etc., over \$1,500 higher than does Mr. Blair, who built them. The difference of \$90, estimated in nails, is more than offset by those used in spiking on scantling to truss the beams in the South wing, of which they admit they were not aware.

The estimate for omitting the “furring down cove ceiling, \$150,” should not be allowed, for it certainly cost more to fur on the studs, than it would to fur on the rough inside boarding, had that been put on. The other items

The Plain Wainscoting.....	\$45 00
126 windows in first, second, and attic.....	378 00
22 single doors .....	110 00
11 pair double doors.....	88 00
1000 feet hip and deck drapery.....	150 00

We were not allowed to cross-examine the witnesses upon, and consequently we cannot know whether the estimate thereon is well founded, or even what the items mean. There is certainly no evidence in the case showing any omission or change for the cheaper, in any of these matters.

Lest there should be any lingering suspicion left, that there were changes and omissions which put money into the contractors' pocket, we will now submit a table of all the changes claimed to have been made from the plans and specifications, which made the building cheaper, with the value of each set opposite; that value being generally estimated by witnesses called to testify against Dr. Merritt, and the Regents:

#### ALLEGED CHANGES FOR THE CHEAPER.

IRON GIRDERS, omitted.....	\$1,700 00
CAPS and SILLS to Basement windows. Brick arches and Redwood sills substituted for Frear Stone, (Perine's testimony), 40 windows at \$9 each.....	360 00
TWO COAT PLASTERING, substituted for three coat, 7.165 yds. (estimated by Doyle and others) at 10 cts. (Duncan's estimate).....	716 50
CORNICE in MAIN LOWER HALLS omitted: 312 feet, at 50 cts....	156 00
ONE COAT OF PAINT and TWO OF SAND omitted on outside: say 2,200 yds., estimated by Farwell at 30 cts.....	660 00
PLATFORM IN PROF. LE CONTE'S ROOM,—say.....	\$ 100 00

(For the difference between Redwood and Cedar for inside finish, I allow nothing. The cedar would cost \$20 per M. more, and some more labor in working. But this is fully offset by the extra expense of painting and graining the redwood; as the cedar would only be varnished.)

GALVANIZED CONDUCTORS,—for cast iron: say....	75 00
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WOODEN CRESTING on deck of roof, substituted for iron; not over.....	500 00
	<hr/>
	\$4,267 50

These are all the departures from the specifications ordered or consented to by Dr. Merritt (as the testimony shows), or which he knew to be charged to exist, until this investigation. He has no reason to believe, and does not believe that other changes were made.

But that the committee may see how great a bug-bear has been spirited up by reckless witnesses and sensational headings in newspaper reports, I will add the other alleged changes, with the amount of each, similarly estimated.

STAIRS, as estimated by Mr. Blair.....	\$ 3,500 00
DIFFERENCE in FLOORING (at Doyle & Co's estimate, evidently \$500, too high).....	1,521 87
DIFFERENCE in OUTSIDE SHEATING, est. by same..	362 00
“ “ HARDWARE, “ “ “ ..	1,270 00
“ “ NAILS, \$90,—(this I omit, for reasons already given.)	
ROUGH BOARDING in ATTIC,—(est. by Doyle & Co.)	150 00
FURRING DOWN COVE CEILING, \$150,—(omitted for reasons already given.)	
DIFFERENCE in WAINSCOTING 2,075 FEET,—(est. by Doyle & Co., \$2,075,)—deduct 50 cts. per foot, for reasons heretofore given .....	1,037 50
PLAIN WAINSCOTING,—(Doyle & Co.).....	45 00
126 WINDOWS @ \$3.....	378 00
22 SINGLE DOORS @ \$5.....	110 00
11 DOUBLE DOORS @ \$8.....	88 00
1000 FEET HIP and DECK DRAPERY.....	150 00
	<hr/>
	\$8,612 37
Add to this the changes for the cheaper ordered by Dr. Merritt.....	\$4,267 50
	<hr/>
Total of omissions, &c.....	\$12,870 87
The amount allowed by the contractors for omis- sions and contribution to University, as be- fore stated, is.....	11,532 00
	<hr/>
DISCREPANCY.....	\$ 1,347 87

This, mind you, is upon the assumption that the specifications called for inside finish like that in the College of Agriculture. The \$20,000, \$30,000, and \$40,000 bubble, in being picked, shrinks down to \$1,347.87.

#### THE "EXTRAS."

Under the clause in the contract authorizing changes to be made by the Building Committee in the plans and style of construction, as the building progressed, other alterations were made at the suggestion of Doctor Merritt and President Gilman, approved in most cases by the Building Committee and the active Regents, before being carried out. I believe there is not one of them but is universally admitted to have been wisely done.

#### LENGTHENING THE HALLS.

As originally planned by Mr. Farquharson, the stairway in each hall would have been very much in the way of the entrance in the east side of the building—as is the case with the College of Agriculture. In that building, wide doors directly facing the steps leading up to the porch, are rendered impracticable by the staircase being in the way; and the subterfuge had to be adopted—of two pairs (apparently) of double doors, one pair of which are *dummies*. To enter the hall, from the outside steps, one has to bear away to the left as he crosses the outside porch, and "sneak" in, as it were, through the narrow doorway, on one side of the hall.

By lengthening the halls four feet on each side of the building, the builders were enabled to place broad doors in the centre of the end of the halls, directly in front of the outside steps leading up to the portico. He who doubts the wisdom of this change, is invited to compare the two buildings in this respect.

Before Dr. Merritt could get the consent of the Regents to this change, the basement walls were already up, and, of course, there was extra expense, for that reason, in making the alteration. For thus extending these halls four feet at each end (equal to adding to the four towers, each, a space eighteen feet wide, four feet deep, and seventy feet high—say 5,040 cubic feet—with three floors and four ceilings, each,

four by eighteen feet, added on each tower) the contractors charged and received \$2,000—about ten cents per cubic foot.

Wolfe and colleagues estimated this at nine hundred and twenty dollars; about four and a half cents per cubic foot ! The value of the whole building, as estimated by Messrs. Gaynor & Williams, Wright, King and others, amounts to about fifteen cents per cubic foot.

As we were not allowed by the committee to thoroughly cross-examine their experts (Doyle and others) on the items which made up the cost of this extension, I cannot present the matter in detail; but I call the committee's attention to the fact that Mr. Doyle estimates (p. 793) the cost of the mere brick work in the basement wall necessitated thereby, at \$430;—nearly half the whole amount (\$920) allowed by Wolfe & Co., for the extension through three stories, basement and tower !

#### WIDENING THE PORCHES.

The four porticoes, or porches, were originally planned like those of the College of Agriculture. Having seen the mean appearance of these last, the Building Committee determined to increase the width of those on the new building, from twelve feet to twenty. Those who have seen the two buildings need no argument to convince them of the propriety of this change.

For this work the contractors charged and received \$600. I admit that it is a rather unusual trait in contractors; but the evidence shows conclusively, that they did not charge half enough for this job ! Rather than believe that the contractors would intentionally do a thing which would so discredit them among those of their own profession, as to charge too little for an "*extra*," I must assume that they made a gross mistake in the matter.

Even Doyle & Co., say this was worth at least \$800. But their estimate of mill work is very much below that of Mr. Miller,—a mill-man of over a dozen years' experience here,—who actually did that work for the contractors. Substituting his estimate of the mill-work for theirs, the cost of widening the four porches, comes fully up to his estimate

made with great care, thoroughness, and accuracy of detail;—over \$1,400.

“ EXPERTS ” WOLFE, BELL, AND MAYBERRY.

After examining his estimate and that of Doyle and Mahoney, on this item, the estimate of Wolfe, Ball, and Mayberry, on the same point becomes simply ludicrous. They allow *one hundred and sixty dollars* for the job!!

The testimony of Wolfe & Co., the committee's experts, shows that the eight extra columns necessitated by the change, would alone cost more than that sum;—and that the extra brick work in the basement wall used in the widening of the four porches, must have cost *over two hundred dollars*! The extra mill-work alone called for by the change, (including the columns) Miller swears is worth fully *one thousand dollars*.

Mr. Mayberry had opportunity to correct his testimony on this point, being interrogated thereon, when re-called. But with dogged obstinacy and malignity he stuck to his first statement, and has thereby destroyed whatever credibility he might otherwise have claimed for his entire testimony.

After this exhibition of their incompetency, or dishonesty (whichever it may be) in deliberately estimating this item at less than one-eighth its real value, it cannot be necessary to say, that the evidence of Messrs. Wolfe, Ball, and Mayberry, on all these matters must be thrown away. It is not necessary to decide whether they show themselves in the matter, to be fools, or knaves, or both. In either case their testimony can have no weight.

#### THE PIAZZA

on the west front of the building was an after-thought. It adds greatly to the beauty of the edifice, and is a great convenience by way of furnishing a direct communication on three floors, between the two halls, without going through the intermediate rooms. When first suggested, the contractors were asked its probable cost, and (after getting from Mr. Miller an estimate for the mill-work) they reported it as about \$1,500. They charged and received \$1,575.

Doyle & Co., estimate it at \$1,041;—but they only allow \$553 for mill-work, while Miller, who did it, says it is worth \$940. He says he estimated it carefully for the contractors, when the Regents asked them its probable cost, at that figure, and that he is sure the estimate is not too high. With this correction, the Doyle estimate would come up to \$1,428,—only \$147, below the amount paid the contractors.

On cross-examination, Mr. Mahoney, one of the makers of the Doyle estimate, confessed he had allowed nearly 1,500 feet too little for the floor timbers and girders, and that there might be other inaccuracies, as he had made his figures very late, the night previous.

So I think we may safely accept the contractor's bill, backed by Miller's careful figures, as correct on the value of the piazza. For the

#### FOUR DOORS OPENING ON THE PIAZZA

The contractors received \$400. The Doyle & Co. estimate is \$340 for these.

Mr. Miller swears that these doors, with frames, transoms, etc., making the mill work complete, were worth \$330, delivered on the spot, with the necessary locks, hinges, and other hardware. The labor of fitting same, and putting up the work he says could not be less than ten dollars for each door.

Mr. Farwell, who did the work, says it was worth half a dollar per yard to paint, grain and varnish these doors and casings, reckoning the molded casings at double their measured width. This made each opening 14 feet high, and 6 feet wide, painter's measure, or over nine square yards on each side, amounting in all to 18 yards, worth nine dollars. We have then

4 doors, casings, hardware, glass transoms, etc...	\$330 00
Carpenters' work .. . . .	40 00
Painting .. . . .	36 00
	<hr/>
An aggregate of .. . . .	\$406 00

We invite a close scrutiny of these figures. Wolfe, Ball, and Mayberry allowed for putting in these doors, etc., \$240; \$90 less than the bare material and mill work cost!

It cannot be necessary to go through all the details of the "extras" in this argument, which is already too long. Mr. Miller is the only witness who has presented to the Committee careful figures, made in detail upon them, except the painting; upon that Mr. Farwell has given you the details. The other witnesses have presented to you their conclusions in a lump, without their figures in detail. Where allowed to cross-question, we showed important errors in their figures, and were soon cut short in our cross-examination.

Messrs. Miller and Farwell are the men who did most of the work, except the carpenters' labor, on these *extras*. Their testimony is not sought to be impeached; it is well known to be unimpeachable.

Upon the matters already examined, as well as all the extra doors, blinds, shutters, etc., etc., their testimony fully sustains the charges made by the contractors. The large sliding doors in the President's room, for which \$146 is allowed by Doyle & Co., are shown by their careful detailed estimates to have cost, as they stand, at least \$175, including frames, architraves, &c.

For the partition, Doyle & Co., allow \$85. Add to this a fair allowance for additional expense by reason of the partition and doors being put in as an after-thought, when the building was well along, and certainly there is not much to be deducted from the \$275, paid the contractors for the partition and door; probably not anything.

Yet the Wolfe party allow only \$150, for the doors and partition !

#### TEN OTHER EXTRA DOORS

were put in by the contractors at an aggregate charge of \$500. Mr. Miller agrees with Doyle and friends in cutting the cost down *two dollars* on each of the five doors on the first floor, and four dollars on each of those on the second floor. By an accidental omission he seems not to have given an estimate on the attic doors. Accepting, however, Doyle & Co.'s estimates on them all, we have \$446, for the ten, instead of \$500. Surely the \$54 of difference (a little over twelve per cent. on the admitted cost) would not be a large profit on the job.



## FOURTEEN SETS WOODEN WINDOW SHUTTERS

were charged for by the contractors, as placed in Prof. Le Conte's room.

It is shown by Miller's testimony that after the blinds for these windows had been made and put together, it was found that Prof. Le Conte, must have the means to darken completely his lecture room, in order to give experiments in his lectures on light, electricity, &c. So, solid shutters were ordered instead of the blinds. But the latter being already made by the contractors, and being entirely useless to them, of course they charged full price for the shutters, as an "extra".

Messrs. Wolfe, Ball, Mayberry and Co., say in their wisdom, that they allow nothing for this, because the blinds would have cost as much !

It appears, also that after the order made for the fourteen sets of shutters (for both rooms) and the making of the eight sets for the lecture room, it was found, that the other six sets (for Prof. Le Conte's other room) were not even begun, and that they could not (by reason of press of business at the mill) be completed in time. The order was countermanded as to them, and the blinds already made were hung in that room.

Mr. Ough was the partner actually overseeing this work. Mr. Power kept the books of the firm and made their settlements. It is evident that he was deceived by the entry on Ough's memorandum book of this change to shutters,—not knowing of the countermanding of the order as to the six sets, and so, in settlement he charged the whole fourteen sets as "extras". Here is an evident mistake of six pair of shutters, \$120,—which amount should undoubtedly be refunded by the contractors. That they will cheerfully do this, none can doubt who know them. I hope that the sum thus saved by discovery of the only error shown to exist in the transaction, may cover the expense of the investigation !

## EIGHT EXTRA WINDOWS IN THE TOWER,

are charged for by the contractors, at \$600. The tracing of the front elevation shows that these came by substituting

*triplet* for mullioned windows in the first and second stories of each tower. Mr. Miller testifies that the change is worth \$75, to each window;—the price charged.

Doyle & Co., do not mention these windows, and Wolfe & Co. allow \$370, for them;—a more liberal allowance than they made in most cases.

#### FINISHING WINGS IN THE MANSARD.

By the original specifications, only the centre of the Mansard was to be finished, as the contractors claimed. They consented, however, to finish also the halls, one on each side of this centre portion, as a part of their contract, on Dr. Merritt's representing to them the absurdity of claiming that it was intended to leave the building so that the only access to the finished portion of the Mansard should be through unfinished halls.

As an after-thought it was determined also to finish the wings of the Mansard; the South wing into one room, say 40x60; and the North wing, say 30x60, into three rooms. For this the contractors were paid \$2,000. This item is printed as if only the one wing was included; but the evidence shows clearly that both wings were finished outside of the contract.

For the larger wing, Doyle & Co. allow \$1,312.50, and admit that they allowed nothing for trussing the floor timbers, a heavy item, of which they knew nothing. The North wing, although smaller, being finished into three rooms, would cost as much, which would make the aggregate \$2,625, besides the trussing of the floor beams!

I think the explanation of this excess over the price charged, is to be found in two items, as far as I can discover from the testimony.

It is shown, by Miller, that if the attic had not been finished, the room below was to be made some four feet higher. This would make a deduction of the expense, of four feet of wall in the attic, from the estimate.

Then in the item printed as "plumb walls" in attic, and "*painting windows*," evidently "*paneling*" should be substituted for "*painting*." Doubtless both these items which Doyle & Co. call "*furring halls in attic and painting windows*,"

and for which they allow \$170, are included in their estimate of finishing the South wing. So striking the balance, we shall gather from Doyle & Co's figures, that \$2,000 for finishing the two wings would be very exactly a fair price, exclusive of the \$500 for "plumbing the attic walls" and "paneling windows."

For *all* this work Wolfe & Co. allow \$750! \$500 for finishing the attic, and \$250 for "plumbing walls of attic and painting windows!"

The floor timbers alone contain over 15 M of lumber, all long lengths, which actually cost the contractors \$25 per M on board ship, in the harbor, with scowing and hauling to be added. The 2x8 scantling spiked on each side of these floor timbers for trussing, would contain over 10 M feet, worth over \$20 per M.

All these floor timbers, each 3x16 and 44 feet long, were one by one put in a frame, and (by wedges driven between the center of the stick and the frame) "sprung" so as to be about 4 inches "crowning." Then these 2x8 pieces were spiked on each side of the floor timber with 40d. nails, in truss form, so as to keep the timber "crowning" when taken out of the frame and put into the floor.

It will be seen that there was a great deal of work in this as well as in putting the floor timber in place, and that the nails for spiking on these 2x8 scantling to the floor timbers alone make a heavy item of expense. It is evident, that the \$750 allowed by Wolfe & Co., would not pay for the timbers laid in the floor—leaving nothing for the flooring, or labor in laying it; for the wainscoting, the furring or plastering the 26 windows finished, or for the painting. Are the estimates of such "experts" to be used for breaking down any man's character?

#### THE TWENTY-SIX SETS INSIDE BLINDS

(Of which Doyle & Co. say they can only find 16) are in the two wings of the Mansard—14 in the South, and 12 in the North wing.

Mr. Miller, who made them, says they are fully worth the price charged, and Doyle & Co. allow at the same rate for the 16 sets which they found.

## EIGHT EXTRA WINDOWS IN BASEMENT.

For these the contractors charged \$25 each, while Doyle & Co. only allow \$12 each.

These windows were put in, after the basement wall was up; and I appeal confidently from Doyle & Co.'s appraisal to those for whom they have done extra work. Miller says the work is worth *more than was charged*, for, in fact, there were four double doors, and four windows extra, instead of eight windows. And Doyle & Co. allow \$24 for "four plank door frames under stoops." Why they allow for the "frames" only, and not for the doors also, does not appear. Certainly, the doors are there, and must be "extra," if the "door frames" are.

For the "plumbing, gas-fitting, and steam-fitting," Doyle & Co. allow the same amount as the contractors charged—\$2,525. This item is entirely ignored by Wolfe & Co., as well as the \$972.62 paid the contractors for excavation, which is allowed in full by Doyle & Co.

In a fit of candor very unusual with them, Wolfe & Co. allow for the seven mantels extra \$500, the price charged by the contractors; nor do they try to reduce the price of the tank, which is charged at \$30.

Doyle & Co. allow only \$400 for the mantels; but add five dollars to the tank.

Such liberality and fairness as is shown by Wolfe & Co. in the matter of the mantels, is so unexpected and so praiseworthy, that I would not like to discourage it. I may, therefore, be excused, I presume, for adopting their valuation.

The only remaining item is that of "curving roof"—that is to say, making the roof of the Mansard convex on its sides, instead of straight, as at first planned. For this the contractors charged \$500. Doyle & Co. allow them \$175, and Wolfe & Co. say it is worth only \$100.

It is in evidence, that, for this purpose, a strip of 1½-inch scantling, eight inches wide in the middle, and rounded down to a point at each end, had to be spiked on to each rafter, for the roof-boards to be nailed to, so as to make the roof convex. Of these pieces there are some 350 to 400, of

varying lengths, from 10 feet to 14 or 16. They were got out at the mill by the witness Miller, who says they are worth forty cents each. Here we have \$140 to \$160 for this one item—\$40 to \$60 more than Wolfe & Co. allow for the whole job. Add to this the extra work of boarding and shingling on this convex surface, the spikes used in nailing these spikes to the rafters, the curved bead-mouldings, etc., and the contractor's charge does not seem too high. Mr. Miller's testimony seems to show that the charge is reasonable.

I have been compelled to go thus tediously through the details of the charges made, because there was fraud charged in all these details.

### THE CONCLUSION OF THE WHOLE MATTER

is, that the Regents pursued a usual and proper course in placing the matter of building the College of Letters in charge of the Building Committee; and that the further centralization of power in the hands of Dr. Merritt and President Gilman, secured greater efficiency, promptness, and unity of action. A body of twenty-two men,—be they the best in the world, cannot act efficiently in such a matter.

The trust thus imposed upon my client is shown to have been faithfully executed. I have shown that the building, unlike most public buildings, is worth every cent it cost, and that there could not possibly have been any dishonest practices in its erection.

I have shown that the contractors cannot have received for their services and profits over \$3,260. Being \$71.99 less than the three and three-quarter per cent. profit which POWER, one of the contractors, writes that they made on the work done by them at the University; and being also only fair compensation for their services,—without profit.

The figures could hardly correspond more exactly without suspicion of collusion.

### THE OMISSIONS AND SUBSTITUTIONS

of cheaper work, we have shown to be very far within the amount allowed for them by the contractors. And allowing

(in the absence of the plans and specifications) every item charged by our opponents in this line the amount to be deducted on account thereof in the aggregate is only **\$12,870 87** taking the estimate of the experts selected by the committee.

The contractors allowed for the omissions and changes for the cheaper, and their gift to the University, \$11,532;—within \$1,338 87 of that amount,—instead of the \$20,000, \$30,000, and \$40,000 heretofore charged.

But nearly two-thirds of this \$12,870 87 is for changes, which are not proved to have been made, which Dr. Merritt swears he never authorized, and which he does not even now know or suppose to be really changes from the specifications, Mr. Duncan admits that Doctor Merritt never told him he had ordered such changes,—and that he had never notified the Doctor that in these respects the building was not being constructed as required by the specifications. All this I have shown.

#### THE EXTRAS

I have shown to be charged for at reasonable prices. Possibly the item of “curving roof” is set too high; and the partition and arch in ladies’ room, and the octagon window may be charged for a little too heavily. But it is evident, that for widening the porches, and finishing the wings of the Mansard, the contractors have charged too little;—enough certainly to more than counterbalance.

This comprises the *mathematics* of the case, and the figures (which cannot lie) completely disprove the charges of fraud which have been so freely made.

#### THE FURNISHING OF LUMBER

by Dr. Merritt has been assumed to be illegal and dishonest. I deny both assumptions. When the contractors had agreed to construct the building for a sum certain, it made no difference to the University where they bought their lumber, nor even what price they paid for it. The University’s only interest was in having *good* lumber furnished; and there is

## NO PRETENCE THAT POOR LUMBER WAS USED.

But I must correct a great misapprehension in this matter, by showing how it came about, that the lumber was so furnished.

At first it was thought by the Regents that they could buy the material, and contract for the labor. Under this impression (it being shown that the lumber needed,—much of it being of long lengths,—could not be had in San Francisco or Oakland,) Dr. Merritt, by consent and advice of the Board of Regents, ordered the coarse lumber from Puget Sound, by telegraph. Before it arrived, the accomplished Secretary of the Board, Mr. Moulder, had called the attention of the board to the Statute approved March 28, 1872, requiring the building to be constructed by contract.

Proposals were at once called for by advertisement, and the contract let to POWER & OUGH, they being the lowest bidders. They were very glad to take the lumber off Dr. Merritt's hands, and he was glad to have them do so. If there be corruption in such a transaction, then undoubtedly my client is corrupt.

The remainder of the lumber, comparatively a small item, was bought by Power & Ough, at Dr. Merritt's lumber yard. They had always bought their lumber there; he never attended personally to that part of his business, and knew no more than one of the Committee, who bought lumber there, unless his clerks consulted him about giving credit to some one, or about collecting a doubtful debt. It did not occur to him to say to his clerks that they might sell lumber to Power & Ough for any other purpose, but must not sell to them for use in this contract. Perhaps it would have been better so to do, as a matter of delicacy, but it did not occur to him until the building was almost done, and then he confided to Dr. Stebbins (in August,) his intention of giving to the University whatever profit there might be on this lumber, so as to avoid all possible cavil; of course this amount could not be ascertained with precision until his yearly balance-sheet, made up on the first day of the new year, should show what percentage of his sales was consumed by yard and office expenses. Before this was done, he was denounced by the papers for alleged complicity in

frauds in this transaction. Of course no payment of such profits could then be made without subjecting him to the charge of being frightened into making restitution for a wrong. He does not choose to place himself in that position.

#### TAMPERING WITH THE PROPOSALS,

In order to give *Power & Ough* the advantage over other bidders by knowing the amount of their bids, is a matter not so much charged against my client, as sneakingly insinuated. The only reason assigned for this insinuation is, that he had the proposals in his possession over night, and that when they were opened, in the presence of the bidders, *Power & Ough's* bid was found to be only \$150 less than that of Mayberry!

No time was specified in the advertisement for opening the proposals. Some of the bidders assumed that they would be opened at the hour up to which proposals were to be received. Dr. Merritt did not even know when that was, and at the time happened to be at Berkeley, with President Gilman and two other gentlemen. On their return, the proposals were handed to him, by President Gilman, who had received them from the janitor. The Doctor did not at first know what the papers were, but on being told, informed such of the bidders as remained, that he could not open them that afternoon, as he had an engagement with two gentlemen who were waiting to bargain with him about doing the plumbing for the Grand Central Hotel. By consent, nine o'clock the next morning was fixed for opening the bids, at which time the Doctor, and President Gilman opened them, in presence of the bidders, tabulated the proposals; found *Power & Ough* the lowest bidders, and so reported to the Board at its next meeting, when the contract was awarded to them.

Dr. Merritt testifies that he did not open, or cause, or suffer to be opened, any bid, except in presence of such bidders as attended, and in conjunction with President Gilman. The envelopes have been shown to you, and present no indications of having been tampered with. It is not pretended that there is any evidence to the contrary; only that there was opportunity to do a dishonest thing.



I have not patience to argue such a matter, and if I should attempt it, I fear I should not be respectful to those who deem the circumstances good ground for suspicion.

As we do not deem her necessarily the most virtuous of her sex, who is most ready to suspect the chastity of others, so we must judge that no man, who has not a lurking taint of hereditary predisposition to petty larceny, would suspect that a gentleman of wealth, character, and position, would commit such a crime, merely from the fact that he had opportunity so to do.

I have only to regret that POWER & OUGH could not be present to testify in the matter. Their absence has been sneered at, as suspicious, and some disreputable editors have spoken of them as "running off to Nova Scotia with their ill-gotten spoil."

The testimony shows, what everybody in Oakland knows, that no more honorable, high-minded, trustworthy men ever did business there; that their plans were made a year before, to return to their native place, in 1873, and that OUGH at first refused to figure for the contract for building the College of Letters, lest it should delay his departure. Finding that his partner, POWER, would be kept here by his contract on the College of Agriculture, so long as to give time for completing the College of Letters, should they get the contract, they made the bid thereon, which was accepted. When their work in the two colleges was done, they closed up their business and returned to Canada, their native place, as they had long previously planned.

After the investigation commenced, Dr. Merritt telegraphed to Mr. Ough to return to California, to testify in the matter; but letters from Mr. Power state that he is too sick to travel. And here I may say, that failing health was the chief cause of their giving up business here.

Mr. Power's testimony would be worth but little, as he was all the while employed in the College of Agriculture, and knows very little about the College of Letters—the work on which was entirely superintended by Mr. Ough.

A word concerning the witnesses, who have sought to swear away the good name of Dr. Merritt and of the contractors—and I have done.

## THE WITNESS DUNCAN.

Chief among these, is Mr. J. W. Duncan. Strongly recommended to the Regents, he was by them appointed their Superintendent of Construction, and trusted thoroughly by them to watch the construction of the College of Letters. Mr. A. S. Hallidie, Mr. J. Mora Moss, and Rev. Horatio Stebbins, members of the Board of Regents—as reputable men as are in this community—testify to their reliance upon him to know whether the work was well done—their statement to him that they did so rely upon him, and his assurance to them that he would faithfully guard the interests of the University, and keep them thoroughly informed in the matter. Dr. Merritt testifies that he instructed Duncan to report everything, not done by the contractors in accordance with the specifications—only not to stop the work, as there was short time to complete the building. Mr. Duncan certified, in writing, to the performance by the contractors, from time to time, of the work on which they received installment-payments; and when the College of Letters was completed, he was called before the Board, at Berkeley, as it was about to accept the building, and stated that it was built according to contract, except the changes ordered by the Building Committee. While the building was in progress, and after its completion, he took every opportunity to assure the Regents, that everything about it was going on well. He was ever loud in his praise of the contractors, especially of “Dick Ough.” He does not deny these things. He says, on cross-examination, that no changes were ordered by the committee, or by Dr. Merritt, except those mentioned in the Doctor’s report, to the Board. He says he never notified Dr. Merritt, or any other Regent, that any other changes were made, or being made.

Yet, this man has the effrontery to come on the stand and say that he had no duty in the way of watching or supervising the construction of this building, and that changes which cheapened the building many thousand dollars (outside of those reported by Dr. Merritt to the Board) were made by the contractors.

He says he would construct such a building for *ten thousand dollars* less than was paid the contractors, and then

privately tells Mr. Gilchrist, that it is the cheapest public building in the State, and could not be duplicated for the money it cost.

He receives the original plans and specifications with strict orders (as he admits) to surrender them to no one without a written order from Dr. Merritt, and says that he delivered them to the contractors, without such order.

He suppresses these papers, to help along the plot against Dr. Merritt and the other Regents, and tries to give the impression, that they were taken away by the contractors.

False friend, faithless servant, treacherous conspirator, —he is sunk so low, that not even his three lawyers, learned and eloquent though they be, can ever

“Wake Duncan with *their* knocking,”

I will not waste further time upon him, but pass on to the other witnesses,

WOLFE, BALL, AND MAYBERRY.

Of the first named, it is enough to say—to show his *animus*—that it is proved that, years ago, Dr. Merritt forbade his speaking to him, and they have not been on speaking terms since. A decent delicacy should have prohibited his appearance against Dr. Merritt in this case.

The last named was a bidder for this same contract, who shows in his testimony that he feels very sore over the fact, that *Power & Ough* underbid him by \$150. He may mean to be honest—though his refusal to correct his absurd estimate of the cost of widening the four porches, does not favor that theory. His prejudice crops out as boldly as that of Mr. Wolfe.

Mr. BALL was much disappointed that Dr. Merritt would not give him \$1,000 for making over the plans and specifications, which Mr. Newsom did for \$300 — *especially as the money was to come out of the University funds, and not out of the Doctor's own pocket.*

When cross-examined on this point, he had the astounding impudence to tell the Doctor that he had refused to give him the job, on the ground that he, Ball, “was not in the ring.”

What sort of a "ring" this is, whose members go around proclaiming its existence, and which gives its members contracts for public work at \$300—which others charge \$1,000 and \$2,000 for—does not very clearly appear.

I would not be understood to claim, that men are to be presumed to testify falsely against those whom they don't like—or by whom they think they have lost a job; but when men, so prejudiced, make estimates of the value of *omissions* or *extras* in a building so absurdly at variance with those of competent, unprejudiced men—as those made by these three witnesses are—I claim that no weight should be given to them.

#### DOCTOR MERRITT'S ALLEGED INTEREST IN THE CONTRACT.

The charge that my client was interested in the contract with POWER & OUGH, rests solely upon Capt. Wilcox's statement; I can hardly call it testimony. He refused to say, when pressed so to do by Mr. Terrill, that Mr. Power told him that Dr. Merritt was interested in the contract. But he answered in the affirmative Mr. Terrill's question "*Was it your impression that Power & Ough were not the responsible parties in the contract, and that Dr. Merritt was the real contractor?*"

If the most degraded Chinaman were on trial for petty larceny, no other man's statements, not made in his presence, could be received against him. Hearsay evidence is rigidly excluded by every judicial tribunal.

But here, where the reputation (more dear than life) of a Regent of the University,—a prominent citizen of our State, a man of extensive business connections, of wealth, and position, (which should at least create a presumption that he would not commit petty larceny) is in question,—you have allowed in evidence against him not even the hearsay statement of a third party made months before, not in his presence, not under oath, not subject to cross-examination,—but the "*impression*" made on still another person by such alleged statement !!!

I appealed to you at the hearing to at once strike out such testimony. You declined to do it, but said you would not be influenced by improper testimony. Who is to know

what testimony, of all that taken and retained in the case, you are influenced by?

Against this shadow of a shade, Dr. Merritt testifies that he never had any interest in the contract; Power & Ough telegraph that they were the only contractors, and Dr. Merritt had no interest. Surely their statement by telegraph is weightier than the "impression" made on Capt. Wilcox, by a casual remark of one of them made months ago.

#### A GOOD BUILDING.

I had nearly forgotten to notice the uniform testimony of the architects, builders, carpenters, plasterers, and painters, that the College of Letters is well built. Of course it is not pretended that it is a "*first class*" building. None such was contemplated. We do not pretend it is of such quality as the College of Agriculture, which, while only three-fourths as large, cost over twice as much. Farquharson says it is "inferior"; but explains that to mean that it is inferior to a first class building,—the other college for instance.

The six experts employed by the Regents to examine it, unanimously pronounce it a "GOOD, FAIR CONTRACT JOB."

Mr. Frost, a veteran painter, and also Mr. Farwell, pronounce the painting "an excellent job". The former was "much surprised to find it so good", and the latter says it is better than the painting in the Grand Central Hotel, the Mills Institute, or even the Capitol at Sacramento.

The plasterers say that work is excellent for two coat work, and the only criticism in the whole matter, which is entitled to any weight, is that of Mahoney, upon the roof. Yet the experts pronounced the roof sufficient. The leak in the roof proclaimed early in the investigation with such a flourish of trumpets, Mr. Wright says is merely a defect in the tinning, which \$20 or \$30, will repair.

The floor over the Assembly Room was announced in the papers to be giving away, so that it had to be propped up. *It is proved that it would hold without pillars all the people that could find room to stand upon it.* As is not strange with timbers forty-four feet long, the beams "sprung" a little, so that

the sliding doors overhead would run together. No other inconvenience was experienced, and *not a crack in the ceiling is to be seen*. And I may here add, as to the sliding doors running together, that I am assured by Prof. Le Conte, that since the iron columns have been placed below, the doors will of themselves slide together or apart, as the columns expand with the heat, or contract with the cold; so nicely are the doors adjusted.

And now what shall I say more? I have shown the charges of fraud made against my client to be, not only unsupported by the evidence, but positively disproved.

I have shown that the COLLEGE OF LETTERS is so thoroughly worth all the money it cost, that THERE COULD NOT BE ANY FRAUD IN ITS ERECTION.

I have shown that the witnesses whose testimony was thought to bear most heavily against Dr. Merritt, are prejudiced and biassed,—one of them at least proved entirely untrustworthy,—and their testimony absurdly in conflict with the facts, as proved by competent and reliable witnesses.

I have shown the building to be a good one, well built, “a good contract job”,—commodious, convenient,—in every way suited for the purposes it was built for.

At the investigation we declared it the cheapest public building in the State at its cost, and invited comparison with other buildings, public or private, of its class. The committee did not see fit to institute such comparison.

Instead of being a matter calling for a defence, the building of the College of Letters at the price it cost is and was a thing to be proud of; and all interested in the University know well how much pride was taken by my client in its speedy erection, its convenient arrangement, the good quality of its material and workmanship, and its general excellence.

The cry of “fraud” so suddenly raised against him in connection with it, came upon him like a thunderclap from out a clear sky.

But as it was taken up by one after another, by personal enemies, by disappointed seekers for a contract, by unprincipled editors—caring nothing whose reputation was blasted,

so a sensation might be created—by eight-hour leagues,—political aspirants and discharged employees;—as

“At once there rose so wild a yell

\* \* \* \* \*

As all the fiends from heaven that fell,

Had pealed the banner-cry of hell."

He felt obliged to forego his original intention of remaining silent and letting the storm spend its fury without notice. He has presented his case, and thanks you for the patience with which you have listened.

He trusts to your candor, and your sense of justice, to put an end to the calumnies by which he has been assailed, by your *ex cathedra* announcement that all the charges of fraud made against him in this connection are, not merely unsustained by the evidence, but completely disproved.

GEO. A. NOURSE,  
Counsel for Samuel Merritt.

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